

1993

The Estate of Martin Haro v. Maria Guadalupe Haro and Everado Haro : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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930702-CA

DOCKET NO.

IN THE UTAH COURT OF APPEALS

THE ESTATE OF MARTIN HARO,

Plaintiff and
Appellant,

vs.

Case No. 930702-CA

MARIA GUADALUPE HARO and
EVERARDO HARO,

Argument Priority 15

Defendants and
Appellees.

BRIEF OF APPELLEE MARIA GUADALUPE HARO

Appeal from the Second District Court, Davis County, Utah
Judge West

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FILED

Utah Court of Appeals

FEB 14 1994


Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

THE ESTATE OF MARTIN HARO,

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LIST OF PARTIES

The persons listed in the caption consist of all parties to this action.

TABLE OF CONTENTS

<u>LIST OF PARTIES</u>	i
<u>TABLE OF AUTHORITIES</u>	iii
I. <u>JURISDICTION OF THE COURT</u>	1
II. <u>ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW</u> . . .	1
III. <u>DETERMINATIVE AUTHORITY</u>	2
IV. <u>STATEMENT OF THE CASE</u>	3
A. <u>Nature Of The Case, Course Of Proceedings And Disposition Below.</u>	3
B. <u>Statement Of Facts.</u>	3
V. <u>SUMMARY OF ARGUMENT</u>	4
VI. <u>ARGUMENT</u>	5
<u>POINT I</u> <u>THE COMPLAINT WAS A NULLITY.</u>	5
<u>POINT II</u> <u>THE TRIAL COURT PROPERLY DENIED THE MOTION TO SUBSTITUTE: RULE 17(a) REQUIRES THAT THE PARTY WHO SUES HAVE LEGAL CAPACITY TO SUE IN ITS OWN BEHALF OR IN BEHALF OF THE "REAL PARTY IN INTEREST"; WHERE THE COMPLAINT WAS A NULLITY, THERE WAS NOTHING TO WHICH AN AMENDMENT WOULD HAVE RELATED BACK UNDER RULE 15(c).</u> . . .	6
A. <u>CONSTRUCTION OF RULE 17(a).</u>	7
B. <u>APPLICATION OF RELATION BACK RULE, 15(c).</u> . . .	8
<u>POINT III</u> <u>THE STATUTE OF LIMITATIONS IS CONSTITUTIONAL.</u>	9
A. <u>STATUTES OF LIMITATION DO NOT ABROGATE THE RIGHT TO RECOVER DAMAGES FOR INJURIES RESULTING IN DEATH.</u>	9
B. <u>STATUTES OF LIMITATION DO NOT LIMIT AMOUNTS RECOVERABLE FOR INJURIES RESULTING IN DEATH.</u> .	11
VII. <u>CONCLUSION</u>	12
ADDENDUM	13

TABLE OF AUTHORITIES

Constitutions:

Constitution of Utah, Article VIII, Section 3	1
Constitution of Utah, Article VIII, Section 5	1
Constitution of Utah, Article XVI, Section 5	2, 9

Statutes:

Utah Code Ann. § 78-2-2	1
Utah Code Ann. § 78-2a-3	1
Utah Code Ann. § 78-11-7	2, 5
Utah Code Ann. § 78-11-11	5
Utah Code Ann. § 78-11-12	2, 5

Cases:

<u>Beach v. University of Utah,</u> 726 P.2d 413 (Utah 1986)	1
<u>Behm's Estate v. Gee,</u> 117 Utah 151, 213 P.2d 657 (1950)	6
<u>Berry v. Beech Aircraft,</u> 717 P.2d 670 (Utah 1985)	9, 10-11
<u>City of Monticello v. Christensen,</u> 788 P.2d 513 (Utah 1990)	1
<u>Doxey-Layton Co. v. Clark,</u> 548 P.2d 902 (Utah 1976)	8
<u>Horn v. Shaffer,</u> 47 Utah 55, 151 P. 555 (1915)	11
<u>Malan v. Lewis,</u> 693 P.2d 661 (Utah 1984)	9, 10
<u>McHenry v. Utah Valley Hosp.,</u> 724 F. Supp. 835 (D. Utah 1989)	11
<u>Shaw v. Jeppson,</u> 121 Utah 155, 239 P.2d 745 (1952)	7

<u>Vina v. Jefferson Ins. Co.,</u> 761 P.2d 581 (Utah Ct. App. 1984) 8
---	-------------

Rules:

Utah R. App. P., Rule 3 1
Utah R. App. P., Rule 4 1
Utah R. Civ. P., Rule 12 2, 3
Utah R. Civ. P., Rule 15 2, 4, 6-8
Utah R. Civ. P., Rule 17 3, 4, 6-9

I. JURISDICTION OF THE COURT

This appeal is brought pursuant to Article VIII, Sections 3 and 5 of the Constitution of Utah, Utah Code Ann. §§ 78-2-2(3)(j) and 78-2a-3(k), and Rules 3 and 4, Utah Rules of Appellate Procedure.

II. ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW

1. Whether the trial court correctly ruled that the Complaint was a nullity where plaintiff lacked capacity to sue under Utah's wrongful death and survivorship statutes.

2. Whether the trial court correctly denied the Rule 17(a) Motion to substitute in plaintiff's place persons who had the capacity to sue under Utah's wrongful death and survivorship statutes.

3. Whether the limitation period under Utah's wrongful death statute is constitutional.

Concerning questions of law, the appeals court accords no deference to the trial court's conclusions, and the standard of review is "correctness." City of Monticello v. Christensen, 788 P.2d 513, 516 (Utah 1990).

Concerning factual issues, if any, on summary judgment, the record is viewed in a light most favorable to the non-moving party. Beach v. University of Utah, 726 P.2d 413, 414 (Utah 1986).

III. DETERMINATIVE AUTHORITY

Constitutional Provisions:

Utah Const., Art. XVI, Sec. 5:

The right of action to recover damages for injuries resulting in death, shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation, except in cases where compensation for injuries resulting in death is provided for by law.

Statutory Provisions:

Utah Code Ann. § 78-11-7:

Except as provided in Title 35, Chapter 1, when the death of a person not a minor is caused by the wrongful act or neglect of another, his heirs, or his personal representatives for the benefit of his heirs, may maintain an action for damages against the person causing the death

Utah Code Ann. § 78-11-12(1)(a):

Causes of action arising out of personal injury to the person or death caused by the wrongful act or negligence of another do not abate upon the death of the wrongdoer or the injured person. The injured person or the personal representatives of heirs of the person who died have a cause of action against the wrongdoer or the personal representatives of the wrongdoer for special and general damages

Rules:

Rule 12(b)(6), Utah R. Civ. P.:

The following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted.

Rule 15(c), Utah R. Civ. P.:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleadings.

Rule 17(a), Utah R. Civ. P.:

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's name without joining the party for whose benefit the action is brought; . . . No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

IV. STATEMENT OF THE CASE

A. Nature Of The Case, Course Of Proceedings And Disposition Below.

Mr. Haro's Estate sued defendants (who are beneficiaries of the estate) for personal injury and wrongful death. Defendants moved to dismiss the claim under Rule 12(b)(6), Utah Rules of Civil Procedure, on the grounds that Utah law does not permit one's estate to bring an action for personal injury or wrongful death. The trial court granted the motion, ruling that the Complaint was a nullity. The trial court denied plaintiff's Rule 17(a) motion to substitute parties, which was filed after the statute of limitations had run on the underlying claims.

B. Statement Of Facts.

1. On February 24, 1991, Martin Haro died as a result of carbon monoxide poisoning he had sustained on December 17, 1990, while he was living at Mrs. Haro's Layton, Utah home. (R. at 1-2.)

2. On January 12, 1993, Mr. Haro's Estate sued decedent's wife, Maria Guadalupe Haro, and his son, Everardo Haro, claiming that their fault caused his injuries and eventual death. The Estate sought special damages in excess of \$80,000 (medical bills and funeral expenses). (R. at 1-2.)

3. The Estate also sought special and general damages against Mr. Haro's wife and son for Mr. Haro's death. (R. at 1-2.)

4. The trial court dismissed the Complaint for failure to state a claim and denied the Estate's Motion to Substitute under Rule 17(a), which was filed on or about April 28, 1993, after the two-year statute of limitations had run. (R. at 52, 53, 86, 163-65, 167-69, 172-75.)

5. The trial court denied the Estate's Motion to reconsider, with minor exceptions not before this Court. (R. at 163-65, 167-69, 172-75.)

V. SUMMARY OF ARGUMENT

Where the Estate had no legal capacity to sue on its own behalf or on behalf of others, it failed to state a claim and the Complaint was a nullity. The trial court properly denied plaintiff's Rule 17(a) motion where the Estate had no legal capacity to sue on behalf of the "real party in interest," and where there was nothing to which such amendment would have related back under Rule 15(c). The legislature's imposition of a reasonable time period in which to exercise the right to bring wrongful death action is not inconsistent with the fundamental

nature of the right; the two-year statute of limitations is constitutional.

VI. ARGUMENT

POINT I

THE COMPLAINT WAS A NULLITY.

Mr. Haro's Estate lacked capacity to sue in its own behalf or in behalf of another under Utah's wrongful death and survivorship statutes. Since the Estate lacked statutory capacity to sue, it failed to state a claim for relief. Therefore, the complaint was a nullity.

Wrongful death and survivorship claims in Utah are statutory creations. The statutes provide for a limited list of individuals who are allowed to bring claims against alleged wrongdoers. Utah's wrongful death statute, Utah Code Ann. § 78-11-7, provides that the heirs, or the personal representatives of the deceased on behalf of the heirs, may bring a wrongful death claim. Utah's survivorship statute, Utah Code Ann. § 78-11-12, similarly, provides that the heirs, or the personal representatives of the heirs, may bring a survivorship action against the alleged wrongdoer. Neither statute provides that the estate can bring an action against the alleged wrongdoer.

The deceased's Estate is a separate entity from the heirs and personal representatives. Thus, the estate is not authorized to bring a wrongful death or survivorship action and is not a party under either the wrongful death or the survivorship

statute. See Behm's Estate v. Gee, 117 Utah 151, 213 P.2d 657, 660 (1950).¹

Claims exist in the persons statutorily specified. The claims do not exist in the Estate of the decedent, in behalf of itself or of another. The Complaint was therefore a nullity.²

POINT II

THE TRIAL COURT PROPERLY DENIED THE MOTION TO
SUBSTITUTE: RULE 17(a) REQUIRES THAT THE PARTY WHO SUES
HAVE LEGAL CAPACITY TO SUE IN ITS OWN BEHALF OR IN
BEHALF OF THE "REAL PARTY IN INTEREST"; WHERE THE
COMPLAINT WAS A NULLITY, THERE WAS NOTHING TO WHICH AN
AMENDMENT WOULD HAVE RELATED BACK UNDER RULE 15(c).

Plaintiff moved the trial court to allow it to substitute the "real parties in interest" for the party bringing suit, misconstruing Rule 17(a) of the Utah Rules of Civil Procedure. Rule 17(a) is inapposite.

¹The Court explained:

[S]uit can be instituted either by the heirs themselves or by the personal representative of the deceased for the benefit of the heirs. The wording of the section compels a conclusion that the legislature intended that the proceeds obtained from the wrongdoer would not be intermingled with other assets of the estate of the deceased

For many years this court has confirmed the principle that the statutory beneficiaries take separate and apart from the estate.

213 P.2d at 660.

²Plaintiff asks what difference it makes if the Estate rather than the party in whom a statutory claim exists brings suit. If that were the attitude of the courts, what difference would any statute or rule make?

A. CONSTRUCTION OF RULE 17(a).

Rule 17(a) is not a "relation back" rule. Instead, Rule 15(c) governs the "relation back" doctrine. The purpose of Rule 17(a) is to grant defendant the right to have a claim prosecuted by the real party in interest, preventing duplicate demands against the defendant and permitting the defendant to assert all defenses and counterclaims available against the real owner of the claim. Shaw v. Jeppson, 121 Utah 155, 239 P.2d 745 (1952).

Rule 17(a) assumes that the person who sues, but who is not the "real party in interest," at least, has the capacity to sue in behalf of the "real party in interest."³ When it is shown that the person who brought suit is a stranger to the claim, Rule 17(a) does not assume that he may substitute the "real party in interest" and trigger Rule 15(c)'s "relation back" provisions.

Under the statutory claims, Mr. Haro's Estate had no more capacity to sue in behalf of the "real parties in interest" for Mr. Haro's wrongful death or survivorship than did an unrelated acquaintance or a stranger to Mr. Haro. The Estate's lawsuit against defendants did not put defendants on notice of a claim for wrongful death or survivorship by the heirs or personal representative of decedent on behalf of the heirs.⁴ Therefore,

³Indeed, Rule 17 accommodates the wrongful death and survivorship statutes by allowing the personal representatives to maintain the action without naming the individual heirs, even though the heirs are the "real parties in interest."

⁴This is particularly the case where the defendants both are beneficiaries of the Estate of Mr. Haro, and had the potential to benefit from their own misconduct, were the money to pass through
(continued...)

the trial court properly denied the Rule 17(a) motion to substitute, and determined that the Complaint was a nullity subject to dismissal.

B. APPLICATION OF RELATION BACK RULE, 15(c).

Rule 15(c) allows certain amendments in pleadings to relate back to the date of original filing. Rule 15(c) does not, however, allow amendments substituting parties or adding new parties. Amendments substituting parties or adding new parties amount to the assertion of a new claim and otherwise defeat the purpose of statutes of limitation. E.g., Doxey-Layton Co. v. Clark, 548 P.2d 902 (Utah 1976); Vina v. Jefferson Ins. Co., 761 P.2d 581 (Utah Ct. App. 1984).⁵

In the present case, had the trial court allowed the substitution of parties, that amendment still would not have related back to the original filing and saved the case from dismissal.

⁴(...continued)
the estate, which is precisely the result the legislature has avoided under the clear statutory language.

⁵The only exception to this rule is where the new and old parties have an identify of interests. Doxey-Layton Co. v. Clark, 548 P.2d 902 (Utah 1976); Vina v. Jefferson Ins. Co., 761 P.2d 581 (Utah Ct. App. 1984).

POINT III

THE STATUTE OF LIMITATIONS IS CONSTITUTIONAL.

Plaintiff contends that the statute of limitation in wrongful death actions violates the Constitution of Utah. The provision on which the Estate relies is Article XVI, Section 5, which states:

The right of action to recover damages for injuries resulting in death, shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation, except in cases where compensation for injuries resulting in death is provided for by law.

The first prong concerns the right to bring a wrongful death claim. The second prong concerns the limitation of the amount of damages recoverable in wrongful death actions. The two parts should be analyzed separately.

A. STATUTES OF LIMITATION DO NOT ABROGATE THE RIGHT TO RECOVER DAMAGES FOR INJURIES RESULTING IN DEATH.

Plaintiff argues that any statutory limitation in wrongful death cases is unconstitutional. Plaintiff relies on Berry v. Beech Aircraft, 717 P.2d 670 (Utah 1985) and Malan v. Lewis, 693 P.2d 661 (Utah 1984) for this proposition. This argument is untenable and is not supported by either case.⁶ Indeed, Berry and Malan support the conclusion that the legislature may enact reasonable procedures for the enforcement of wrongful death actions and may provide for reasonable defenses that are not inconsistent with the fundamental nature of the wrongful death

⁶If plaintiff's argument were accepted, there could never be repose in wrongful death cases.

action itself, such as the imposition of reasonable limitation periods in which to exercise the right.

Berry involved a wrongful death claim against an aircraft manufacturer brought under products liability theories. The death claim was instituted within the two-year period for wrongful death claims. However, the statute of repose for death or injury caused by a defective product was six years after sale of the product or ten years after manufacture of the product. The Court concluded that the statute of repose for defective products was unconstitutional because it operated to bar actions without regard to when the injury occurred. In other words, the statutory period in which to file suit for death or injury arising out of the use of a product could run before the injury or death occurred. In that circumstance, the statute of repose extinguished the right to bring an action before a claim arose, operated as an absolute bar, provided the injured person no reasonable time in which to sue, and therefore violated the open courts and wrongful death provisions of the Constitution of Utah. Berry, 717 P.2d 670, 671-85.⁷

The Berry Court recognized that despite the existence of the open courts and wrongful death provisions, the Legislature may

⁷In Malan, the Utah Supreme Court found Utah's Guest Statute unconstitutional because it altogether deprived a class of persons the right to bring suit for injuries or death. The holding was grounded primarily in equal protection theory. Unlike the statute before this Court which gave a statutory plaintiff two years in which to sue, the guest statute provided Mr. Malan no opportunity to bring a claim for injuries. 693 P.2d at 663-69.

enact reasonable procedures for enforcement of wrongful death actions and may provide for reasonable defenses that are not inconsistent with the fundamental nature of the wrongful death action.

Id. at 685.

Unlike the statute of repose struck down in Berry, the statute of limitations for wrongful death does not run without regard to the date on which the injury occurs. The statute of limitations begins to run only after the injury occurs. As opposed to a statute of repose, as in Berry, the wrongful death statute of limitations offers a balance of interests: it allows a reasonable time in which to exercise the constitutional right, yet protects a potential defendant from exposure for an unlimited time as memories fade and evidence disappears; enacting the wrongful death statute of limitation therefore falls within the legislature's prerogative and is not inconsistent with the fundamental nature of the wrongful death action itself.

Statutes which set reasonable time limitations in which to exercise the right do not offend the rights at issue, are within the legislature's prerogative, balance the defendant's rights and interests, and are constitutional. E.g., Horn v. Shaffer, 47 Utah 55, 151 P. 555 (1915); McHenry v. Utah Valley Hosp., 724 F. Supp. 835 (D. Utah 1989).

B. STATUTES OF LIMITATION DO NOT LIMIT AMOUNTS RECOVERABLE FOR INJURIES RESULTING IN DEATH.

The limitation period at issue does not purport to place a limit on amounts recoverable for injuries resulting in death. Assuming a plaintiff files the claim within the reasonable time

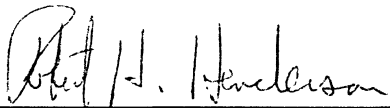
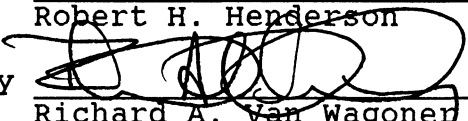
set by the legislature (two years), the damages are not subject to statutory limitation.

VII. CONCLUSION

This Court should affirm the Amended Findings of Fact, Conclusions of Law, and Judgment of Dismissal of the trial court.

DATED this 10th day of February, 1994.

SNOW, CHRISTENSEN & MARTINEAU

By 
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35\rav\05968.885\brief

ADDENDUM

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IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY
STATE OF UTAH

THE ESTATE OF MARTIN HARO,

Plaintiff,

vs.

MARIA GUADALUPE HARO and
EVERARDO HARO,

Defendants.

AMENDED FINDINGS OF FACTS,
CONCLUSIONS OF LAW AND
JUDGMENT

Civil No. 930700016PI

Honorable W. Brent West

This action came on for hearing on Defendant's Motion to Dismiss and Plaintiff's Motion to Substitute Real Party in Interest on Thursday, the 3rd day of June, 1993, Honorable W. Brent West presiding, no one appearing for the plaintiff, Raymond M. Berry appearing for Defendant Maria Guadalupe Haro and J. Kent Holland appearing for Defendant Everardo Haro. The Court having read the memoranda of counsel, having heard the arguments of Raymond M. Berry and J. Kent Holland and also having considered Plaintiff's Motion for Reconsideration as to Rule 59(1) and 60(b)(1) Motions as timely made, now therefore makes the following amended findings of fact and conclusions of law.

FINDINGS OF FACT

1. On February 24, 1991, Martin Haro died from carbon monoxide intoxication as the result of inhaling carbon monoxide fumes on December 17, 1990, in the home of his wife, Maria Guadalupe Haro.

2. That on January 12, 1993, an action was instituted in the name of the Estate of Martin Haro, Plaintiff, vs. Maria Guadalupe Haro and Juan A. Haro.

3. That on February 26, 1993, an Amended Complaint was filed which listed only Maria Guadalupe Haro and Everardo Haro as defendants.

4. That the Complaint and Amended Complaint are nullities since the Estate of Martin Haro does not have capacity to sue.

5. That the Amended Complaint naming Everardo Haro as a defendant was filed more than two years after the date of the death of Martin Haro.

6. That Estella Haro, Maria A. Treto, Leonor Arteago, Alberto Haro, Juan A. Haro, Francisca Arellano, Esteban Haro, Raudel Haro, Emilia Haro and Sylvia Haro are children and heirs of Maria Guadalupe Haro and Martin Haro.

7. Martin Haro died intestate.

CONCLUSIONS OF LAW

1. As the Estate of Martin Haro is not an heir and did not have the capacity to sue, the Complaint and Amended Complaint are nullities.

2. It is not necessary to make a determination of heirship under the Probate Code in order to maintain a wrongful death action.

3. Oral argument was not necessary.

JUDGMENT OF DISMISSAL

Now therefore, it is ordered and adjudged:

1. That the above-entitled action by the Estate of Martin Haro v. Maria Guadalupe Haro and Everardo Haro be dismissed with prejudice on the merits.

2. That Plaintiff's Motion to substitute the children, Estella Haro, Maria A. Treto, Leonor Arteago, Alberto Haro, Juan A. Haro, Francisca Arellano, Esteban Haro, Raudel Haro, Emilia Haro and Sylvia Haro is denied with prejudice.

3. That the action of the Estate of Martin Haro v. Maria Guadalupe Haro and Everardo Haro is dismissed with prejudice as to Defendant Everardo Haro as the action was not instituted within two years of the date of the death of the deceased, Martin Haro.

DATED this _____ day of August, 1993.

BY THE COURT:

Honorable W. Brent West
District Court Judge

AFFIDAVIT OF SERVICE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

Linda St. John, being duly sworn, says that she is employed by the law offices of Snow, Christensen & Martineau, attorneys for Defendant Maria Guadalupe Haro herein; that she served the attached AMENDED FINDINGS OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT (Case Number 930700016PI, Second Judicial District Court of Davis County, State of Utah) upon the parties listed below by placing a true and correct copy thereof in an envelope addressed to:

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and causing the same to be mailed first class, postage prepaid, on the 5th day of August, 1993.

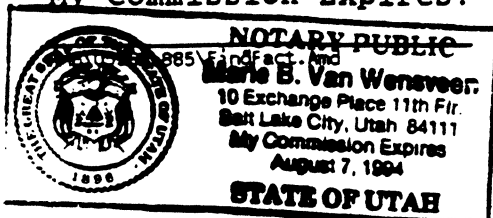

Secretary

SUBSCRIBED AND SWORN to before me this 5th day of August, 1993.


NOTARY PUBLIC

Residing in the State of Utah

My Commission Expires:



CERTIFICATE OF SERVICE

I do hereby certify that on the 14 day of February, 1994
I caused two (2) true and correct copies of the Brief of
Defendant Maria Guadalupe Haro to be served upon the following:

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